

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3613 OF 2007

Dr.Arun Harshdrai Bhatt.....		Petitioner
V/s		
M/s.Allwell Builders Corpn. & Ors.....		Respondents.

Mr.S.S.Kulkarni, Adv. For the petitioner.

Mr.L.H.Patil, Adv. For respondent No.1A.

CORAM: A.P.DESHPANDE, J.
10/8/07

PC:

The present petition is directed against an order passed by the trial Court rejecting an application for condonation of delay in filing an application for setting aside the ex-parte decree by the petitioners/original defendants. The respondent is a builder who had agreed to sale suit flat to the present petitioners for a sum of Rs.4 lacs. The petitioners paid a sum of Rs.2.5 lacs and the balance remained to be paid. The petitioners were placed in possession of the flat. As the petitioners did not pay balance amount the respondent instituted a suit against the petitioners for recovery of possession and in the alternate demanded the balance amount of consideration. Both the petitioners were admittedly served with suit summons. Respondent No.2 appeared before the trial Court and the record reveals that she took two adjournments. After taking adjournments the petitioners did not appear

before the trial Court and did not contest the suit which ultimately came to be decreed after a period of some four years i.e. On 13.7.04. The trial Court dismissed the suit of the respondent for possession of the flat. However decreed the suit to the extent of claim for balance consideration. Belatedly an application was moved under Order IX rule 13 for setting aside the ex-parte decree and as there was delay in filing said application yet another application was filed seeking condonation of delay. For condonation of delay various grounds are set out such as accident of the petitioner No.1, ill health of respondent No.2, loss of memory by petitioner No.2, service of petitioner No.1 being at far off place etc. On appreciation of evidence and material on record the trial Court has found that the present petitioners have never been diligent either in defending the suit or in filing the application for setting aside the ex-parte decree and thus rejected the application for condonation of delay. Perused the order passed by the trial Court. The same goes to take possible view of the matter. Hence no interference is called for in exercise of writ jurisdiction. Writ petition is summarily dismissed. At this stage learned counsel for the petitioner seeks stay of this order for a period of eight weeks. Stay granted as prayed for.

10.8.07